



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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April 27, 2023



Hector Guerra, Chief Environmental Planner
Tulare County Resource Management Agency
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Subject: **Tulare 40 Generation Facility Project (Project)**
MITIGATED NEGATIVE DECLARATION (MND)
State Clearinghouse No. 2023030760

Dear Hector Guerra:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from Tulare County Resource Management Agency (Tulare County), as Lead Agency, for the Tulare 40 Generation Facility Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

Hector Guerra, Chief Environmental Planner
Tulare County Resource Management Agency
April 27, 2023
Page 2

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. Likewise, to the extent implementation of the Project as proposed may result in “take” as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

In this role, CDFW is responsible for providing, as available, biological expertise during public agency environmental review efforts (e.g., CEQA), focusing specifically on project activities that have the potential to adversely affect fish and wildlife resources. CDFW provides recommendations to identify potential impacts and possible measures to avoid or reduce those impacts.

Nesting Birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs, and nests include 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

PROJECT DESCRIPTION SUMMARY

Proponent: Coldwell Solar I, LLC

Objective:

The Project proposes to construct and operate an approximately 40-megawatt (MW) solar generation facility on two parcels totaling approximately 160 acres in western Tulare County. Project activities would include the installation of approximately 68,040 single axis mounted solar modules, rated at 650 watts per module. It should be noted that watts per module may increase at time of Project construction; however, for planning purposes, approximate module output of 650 watts is assumed. In addition to the installation of photovoltaic (PV) solar modules, the proposed development area of the Project would include the construction of an on-site substation, wiring and inverters, fence, access roads, and a new very short distribution interconnect power line to the existing substation located directly adjacent to the Project location at the Southern California Edison (SCE) Bliss Substation. The southern development area of the Project would potentially include a 20-MW storage component in the form of batteries. The life of the Project is anticipated to be 35 years.

Location: The proposed Project is in an unincorporated area of southern Tulare County, approximately 5 miles east of the City of Tulare and west of Road 164. The

Hector Guerra, Chief Environmental Planner
Tulare County Resource Management Agency
April 27, 2023
Page 3

Project site is addressed as 16398 Avenue 208, Strathmore, CA. The Project will be located on two separate properties/locations. The northern Project development area is located approximately 0.50 miles north of the intersection of Avenue 208/Road 164. The southern development area is located south of the intersection of Avenue 208/Road 164 (immediately adjacent to and south and west of the SCE Bliss substation). The site is located within the United States Geological Survey (USGS) Cairns Corner 7.5 Minute Quadrangle. It lies within Sections 23, 24, 25, & 26; Township 20 South; Range 25 East, Mount Diablo Baseline and Meridian (MDB&M), within Assessor's Parcel Number (APNs) 196-020-012 (on 153 acres of the northern portion) and 196-030-004 (on approximately 160 acres of the southern portion).

Timeframe: Undetermined

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Tulare County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources.

Aerial imagery of the Project boundary and its surroundings show the area contains agricultural lands including row crops and orchards, ruderal and landscaped vegetation, scattered residences, and livestock lots. Based on a review of the Project description, a review of California Natural Diversity Database (CNDDB) records, and the surrounding habitat, special status species could potentially be impacted by Project activities.

Currently, the MND acknowledges that the Project area is within the geographic range of several special-status animal species and proposes specific mitigation measures to reduce impacts to less than significant. CDFW has concerns about the ability for some of the proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis macrotis*); and the State threatened Swainson's hawk (*buteo swainsoni*). CDFW is also concerned with potential impacts to migratory and non-migratory nesting birds.

San Joaquin Kit Fox (SJKF)

The MND identified SJKF as having the potential to occur within the Project area and provided Mitigation Measure 4-2 to mitigate for impacts to SJKF; however, the actual language within this measure was focused solely on nesting raptors and other migratory birds. Due to this error, and as SJKF have the potential to forage or move through the Project site, CDFW recommends the following:

Hector Guerra, Chief Environmental Planner
Tulare County Resource Management Agency
April 27, 2023
Page 4

Recommended Mitigation Measure 1: SJKF Pre-activity Survey

CDFW recommends that surveys following the United States Fish and Wildlife Service (USFWS) "Standardized Recommendations for Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance" (2011) (USFWS Protocol) be conducted no more than 30 days prior to any ground disturbing activities.

Recommended Mitigation Measure 2: SJKF Avoidance Buffer

CDFW recommends implementing no-disturbance buffers, as described in the USFWS' "Standardized Recommendations for Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance" (2011) (USFWS Protocol) around potentially suitable or known SJKF den sites. If the no-disturbance buffers outlined in the USFWS Protocol cannot be maintained, then consultation with CDFW is warranted to determine if the Project can avoid take or if take authorization is necessary as described below.

Recommended Mitigation Measure 3: SJKF Take Authorization

If the no-disturbance buffers outlined in the USFWS Protocol for SJKF is not feasible, CDFW recommends that consultation with CDFW occur to discuss how to implement the Project and avoid take. If take cannot be avoided, take authorization through the acquisition of an Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

Swainson's Hawk (SWHA)

The MND identified SWHA as having the potential to occur within the Project area and provided Mitigation Measure 4-2 to mitigate for impacts to SWHA. Mitigation Measure 4-2 states that, "Project activities must occur during the nesting season (February 1 August 31), a qualified biologist will conduct preconstruction surveys for active raptor and migratory bird nests within 30 days of the onset of these activities. The survey will include the proposed work area(s) and surrounding lands within 500 feet for all nesting raptors and migratory birds save Swainson's hawk; the Swainson's hawk survey will extend to ½-mile outside of work area boundaries. If no nesting pairs are found within the survey area, no further mitigation is required." CDFW does not recognize this measure as being sufficient to minimize and avoid impacts to SWHA and recommends the following:

Recommended Mitigation Measure 4: SWHA Surveys

To evaluate potential impacts, CDFW recommends that a qualified biologist conduct surveys for nesting SWHA following the survey methods developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC, 2000) prior to project implementation. The survey protocol includes early season surveys to assist the project proponent in implementing necessary avoidance and minimization measures, and in identifying active nest sites prior to initiating ground-disturbing activities.

Hector Guerra, Chief Environmental Planner
Tulare County Resource Management Agency
April 27, 2023
Page 5

Recommended Mitigation Measure 5: SWHA Avoidance Buffer

If Project-specific activities will take place during the SWHA nesting season (i.e., March 1 through September 15), and active SWHA nests are present, CDFW recommends a minimum ½-mile no-disturbance buffer be delineated and maintained around each nest, regardless of whether it was detected by surveys or observed incidentally. These buffers would remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival, to prevent nest abandonment and other take of SWHA as a result of Project activities.

Recommended Mitigation Measure 6: SWHA Take Authorization

CDFW also recommends that in the event an active SWHA nest is detected, and a ½-mile no-disturbance buffer is not feasible, consultation with CDFW is warranted to discuss how to implement the project and avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA

Nesting Birds

The MND identified nesting birds as having the potential to occur within the Project area and provided Mitigation Measure 4-2 to mitigate for impacts to SWHA. Mitigation Measure 4-2 states that, “Project activities must occur during the nesting season (February 1 August 31), a qualified biologist will conduct preconstruction surveys for active raptor and migratory bird nests within 30 days of the onset of these activities. The survey will include the proposed work area(s) and surrounding lands within 500 feet for all nesting raptors and migratory birds save Swainson’s hawk; the Swainson’s hawk survey will extend to ½-mile outside of work area boundaries. If no nesting pairs are found within the survey area, no further mitigation is required.” CDFW does not recognize this measure as being sufficient to minimize and avoid impacts to migratory and non-migratory nesting birds and recommends the following:

Recommended Mitigation Measure 7: Nesting Bird Surveys

If ground-disturbing activities occur during the nesting bird season (February 1 – September 15), CDFW recommends that a qualified biologist conduct pre-activity surveys for active nests no more than one week prior to the start of ground disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the work site to identify nests and determine their status. A sufficient area means any area potentially affected by a project. In addition to direct impacts (i.e., nest destruction), noise, vibration, odors, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests.

Hector Guerra, Chief Environmental Planner
Tulare County Resource Management Agency
April 27, 2023
Page 6

Recommended Mitigation Measure 8: Nesting Bird Monitoring and/or Avoidance Buffer

Once construction begins, CDFW recommends a qualified biologist continuously monitor nests to detect behavioral changes resulting from the project. If behavioral changes occur, CDFW recommends the work causing that change cease and that CDFW be consulted for additional avoidance and minimization measures. If continuous monitoring of identified nests by a qualified biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. Variance from these no-disturbance buffers is possible when there is a compelling biological or ecological reason to do so, such as when the construction area would be concealed from a nest site by topography. CDFW recommends that a qualified biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

Editorial Comments and/or Suggestions

Federally Listed Species: CDFW recommends consulting with USFWS regarding potential impacts to federally listed species including but not limited to SJKF. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any Project activities.

Lake and Streambed Alteration: If streams, swales, or drainages occur on the Project site, Project activities may be subject to CDFW's regulatory authority pursuant to Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation); (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial.

CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement; therefore, if the MND approved for the Project does not adequately describe the Project and its impacts to lakes or streams, a subsequent CEQA analysis may be necessary for LSA Agreement issuance. For information on notification requirements, please refer to CDFW's website

Hector Guerra, Chief Environmental Planner
Tulare County Resource Management Agency
April 27, 2023
Page 7

(<https://wildlife.ca.gov/Conservation/LSA>) or contact CDFW staff in the Central Region Lake and Streambed Alteration Program at (559) 243-4593 or R4LSA@wildlife.ca.gov.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database, which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the CNDDDB. The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist Tulare County in identifying and mitigating Project impacts on biological resources.

If you have any questions, please contact Jeremy Pohlman, Senior Environmental Scientist (Specialist), at the address provided on this letterhead, by telephone at (805) 503-2375 or by electronic mail at Jeremy.Pohlman@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...
Julie A. Vance
Regional Manager

Hector Guerra, Chief Environmental Planner
Tulare County Resource Management Agency
April 27, 2023
Page 8

REFERENCES

Swainson's Hawk Technical Advisory Committee (SWHA TAC). 2000. *Recommended timing and methodology for Swainson's hawk nesting surveys in California's Central Valley*. Swainson's Hawk Technical Advisory Committee, May 31, 2000.

United States Fish and Wildlife Service. 2011. *Standard recommendations for the protection of the San Joaquin kit fox prior to or during ground disturbance*. United States Fish and Wildlife Service. January 2011.

Attachment 1

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM
(MMRP)**

PROJECT: Tulare 40 Generation Facility Project

SCH No.: 2023030760

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
SJKF	
Recommended Mitigation Measure 1: SJKF pre-activity survey	
Recommended Mitigation Measure 3: SJKF take authorization	
SWHA	
Recommended Mitigation Measure 4: SWHA surveys	
Recommended Mitigation Measure 6: SWHA take authorization	
Nesting Birds	
Recommended Mitigation Measure 7: Nesting bird surveys	
<i>During Construction</i>	
SJKF	
Recommended Mitigation Measure 2: SJKF avoidance buffer	
SWHA	
Recommended Mitigation Measure 5: SWHA avoidance buffer	
Nesting Birds	
Recommended Mitigation Measure 8: Nesting bird monitoring and/or avoidance buffer	